

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Closed Captioning and Video)
Description of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket No. 95-176

To: The Commission

OPPOSITION OF UNIVISION COMMUNICATIONS INC.

Univision Communications Inc. ("Univision"), by its attorneys, hereby opposes the Request for Reconsideration of the Captioning Mandates ("Request") filed in the above-captioned proceeding by the National Association of the Deaf and the Consumer Action Network (collectively, the "Petitioners").^{1/} Specifically, Univision opposes the Petitioners' request that the Commission reverse its decision to exempt certain Spanish language programming from its captioning mandates. As shown below, nothing in the Petitioners' Request warrants a reversal of the Commission's decision.^{2/}

^{1/} Univision also opposes the Petition for Reconsideration filed by Self Help for Hard of Hearing People, Inc. ("SHHH") to the extent that SHHH supports the Petitioners' Request. See SHHH's Petition for Reconsideration at 2.

^{2/} This Opposition is being timely filed pursuant to Section 1.429(f) of the Commission's rules, as the Request was published in the Federal Register on November 5, 1997. 47 C.F.R. § 1.429(f).

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I. The Commission Partially Exempted Spanish Language Broadcasters from Its Closed Captioning Mandates Based on a Complete Record

1. Univision, as acknowledged by the Petitioners, is “the nation’s premier Spanish language network.” Request at 12. As such, Univision constantly seeks to improve the broadcast services it provides to the nation’s Hispanic population. Thus, Univision informed the Commission through comments in this proceeding that it supported the Commission’s goals behind closed captioning, but, as a Spanish language broadcaster receiving much of its programming from outside of the United States, Univision would require either a longer phase-in period for closed captioning or an exemption because of the extreme difficulties associated with captioning Spanish language programming. In addition, Univision noted that the allocation of resources necessary to caption the programming aired by Univision would adversely affect the level of programming and community service Univision presently provides to its audience.^{3/}

2. After submitting its comments, Univision conducted further research into the feasibility of captioning Univision’s 168 hours per week of programming. This research indicated that captioning Univision’s programming with the scant technical and personnel resources available today was impossible. At this point, Univision recognized that the only way to continue to provide its current level of Spanish language programming service was to urge the Commission to exempt Spanish language programming from its captioning mandates. Univision presented its findings to the Commission in meetings on July 29, 1997 and July 30, 1997. See

^{3/} Even if there were a Spanish language closed captioning industry in the United States, the economic costs for Univision to caption its programming are anticipated to exceed the individual gross revenues of over half of Univision’s owned and operated stations. These immense costs would likely force Univision to air less programming, purchase cheaper programs of lower quality, and/or cut back its service to its communities in order to afford the closed captioning service. See Comments of Univision Communications Inc. at 2-5.

Notice of Ex Parte Presentation filed by Univision Communications Inc., MM Docket No. 95-176 (July 30, 1997).^{4/}

3. After careful review of over one hundred comments filed in this proceeding, the Commission agreed with Univision that

the personnel and the facilities necessary to caption languages other than English are extremely limited and with respect to live captioning are almost entirely nonexistent. Where the programming is acquired from outside of the United States, in many situations, additional logistical problems are presented due to the timing of the programming delivery process and the fact that the programming is produced primarily for markets outside of the United States, where there is no closed captioning obligation and, indeed, where there may be no technical system and standards for the distribution of such materials.

Report and Order, Closed Captioning and Video Description of Video Programming, FCC 97-279 (released August 22, 1997) (emphasis added) (“R&O”) at ¶ 147. However, the Commission did find that “pre-scripted programming that makes use of a teleprompter can be captioned using the [electronic news room] technique without significant cost and without problems being created by the absence of closed captioning stenotypers, regardless of the language involved.” R&O at ¶ 148. Based on its findings, the Commission exempted “[a]ll programming for which the audio is in a language other than English, except that scripted programming that can be captioned using the ‘electronic news room’ technique” 47 C.F.R. § 79.1(d)(3).

4. On October 15, 1997, the Petitioners filed their Request which, among other matters, contends that the Spanish language exemption should be reversed.

^{4/} Because of these presentations, the Petitioners’ contention that Univision did not ask for a blanket exemption is mistaken. See Request at 12.

II. The Petitioners' Request Must Be Denied Because It Fails to Provide any Evidence That Would Justify a Reversal of the Commission's Reasoned Decision to Exempt Certain Spanish Language Programming

5. Contending that the Commission should not exempt Spanish language programming from the closed captioning mandates, the Petitioners challenge the Commission's findings regarding the feasibility of captioning Spanish language programming. These efforts to discredit the Commission's findings, however, are without support and cannot withstand scrutiny.

6. First, the Petitioners challenge the Commission's finding that "the personnel and the facilities necessary to caption languages other than English are extremely limited and with respect to live captioning are almost entirely nonexistent." R&O at ¶ 147. Specifically, the Petitioners rely entirely upon comments filed by two parties in the proceeding, VITAC and WGBH, in an effort to prove that it is possible to caption Spanish language programming. See Request at 13.

7. The Petitioners' argument against the Commission's findings regarding the resources available to caption Spanish language programming falls short of its mark. If anything, the Petitioners' exclusive reliance upon evidence provided in comments in this proceeding, and cited in the R&O, merely reinforces the fact that the Commission considered that evidence and still concluded that few resources exist to caption Spanish language programming. The Commission's direct citations to the comments submitted by VITAC and WGBH illustrate that the Commission read, analyzed, and considered these comments before concluding that the difficulties in captioning Spanish language programming warrant an exemption because of the

undue burden involved.^{5/} Moreover, the fact that these commenting parties stated that some resources to caption Spanish language programming do exist or might be created does not contradict the Commission's finding that, overall, there are presently very few personnel or facilities available to caption Spanish language programming.

8. Based upon their mistaken belief that a Spanish language closed captioning industry not only exists, but that it can handle all of the Spanish language programming broadcast in the United States, the Petitioners argue that foreign programming can merely be captioned after its importation. The Petitioners therefore state that the Commission should not be concerned with the logistical problems of captioning Spanish language programming obtained from sources outside of the United States. Thus, while the Petitioners do not dispute that significant logistical problems exist, they urge the Commission to ignore them. See Request at 13-14.

9. The Petitioners fail to provide any relevant evidence in support of their assertion that imported Spanish language programming can simply be captioned after it arrives in the United States. Instead, the Petitioners anecdotally argue that because Masterpiece Theater, a single imported English language program, is captioned, Spanish broadcasters should be able to caption hundreds of imported Spanish language programs per week. See Request at 13. As an English language program, Masterpiece Theater has little relevance in determining the feasibility of captioning imported Spanish language programming. Moreover, captioning a single imported program does not address the question of whether the United States closed captioning industry

^{5/} The Petitioners' reliance upon the comments submitted by VITAC are particularly misplaced. As highlighted by the Commission, VITAC not only indicated that off-line Spanish could not be captioned at present, but that because "few schools teach Spanish stenotypy . . . it [will] take at least four years to train Spanish-speaking stenocaptioners to real time caption Spanish newscasts." R & O at ¶ 100.

could handle the large amount of imported programs that Univision and other Spanish language broadcasters air each week.

10. The Petitioners have provided absolutely no evidence that the problems of captioning foreign Spanish language programming can be overcome by closed captioning resources in the United States. As the Commission found in this proceeding, the captioning resources that exist are unable to accommodate these programs. Nor have the Petitioners explained how American closed captioning companies will be able to resolve the many logistical problems, including timing issues relating to the delivery of the imported programs shortly before they are to air. In short, the Petitioners have provided no evidence that the Commission was incorrect when it found that an undue burden would be imposed on Spanish language broadcasters if the Commission forced them to caption all of their programming.


11. Finally, the Petitioners make an irrelevant challenge to the fact that captioning non-English language programming costs more than captioning English language programming. See Request at 14. Until the captioning of non-English language programming becomes possible on a large scale, its costs are an academic question that contributes little to the decision as to whether broadcasters should be required to caption such programming. However, even ignoring the pragmatic problems in captioning foreign language programming, considering how few resources are available to provide this service, a basic supply and demand analysis indicates that captioning non-English language programming will be far more expensive than captioning English language programming. Moreover, the inability of Spanish language broadcasters to even obtain scripts for the foreign programs they are to caption makes captioning a far more complex and expensive process.

Conclusion

The Petitioners have provided no new information to challenge the Commission's findings regarding the practical feasibility of captioning Spanish language programming. Accordingly, a reversal of the Commission's reasoned decision to exempt certain Spanish language programming from its captioning mandates is unwarranted. Univision therefore urges the Commission to deny the Petitioners' request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Renee Williams, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that a true copy of the foregoing "**OPPOSITION OF UNIVISION COMMUNICATIONS INC.**" was sent this 20th day of November, 1997, by first class United States Mail, postage prepaid, to the following:

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